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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/966,095

10/01/2001

Francois Balay

Balay 2-1

4702

46900

7590

05/12/2009

MENDELSON, DRUCKER, & ASSOCIATES, P.C.  
1500 JOHN F. KENNEDY BLVD., SUITE 405  
PHILADELPHIA, PA 19102

EXAMINER

DANG, KHANH

ART UNIT

PAPER NUMBER

2111

MAIL DATE

DELIVERY MODE

05/12/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* FRANCOIS BALAY,  
AND PETER RIEDL

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Application No. 09/966,095  
Technology Center 2111

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Mailed: April 12, 2009

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Before DELORES LOWE, *Review Team Paralegal*  
LOWE, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 15, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

**APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER**

Appellants filed an Appeal Brief dated February 27, 2007. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) ***Summary Of Claimed Subject Matter.*** A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. < While reference to page and line number of the specification **\*\*>requires<** somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 2-3 of the Appeal Brief filed February 27, 2007 is deficient because it does not separately map independent claims 10 and 19 to the specification. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

Lastly, appellants filed a paper entitled "Response to Examiner's Refusal to Enter Material Information" dated December 3, 2007.

There is no indication on the record that the Examiner has considered the above paper entitled "Response to Examiner's Refusal to Enter Material Information."

### **CONCLUSION**

Accordingly, it is

ORDERED that this application be returned to the Examiner to:

- 1) hold the Appeal Brief filed February 27, 2007 defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellants to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
- 3) acknowledge and consider any "paper" submitted by Appellants to correct the Appeal Brief;

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4) consider the paper entitled “Response to Examiner’s Refusal to Enter Material Information” dated December 3, 2007 as required;

5) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

/DAL/

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